



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19687750

Date: DEC. 7, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that the Beneficiary is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, to demonstrate eligibility as an individual of exceptional ability, a petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT).

may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

As an initial matter, we note that the Director did not address whether the Petitioner 1) is qualified for the underlying EB-2 visa classification and 2) established that his proposed endeavor has both substantial merit and national importance under *Dhanasar*'s first prong. The Director's new decision should include an analysis of these two issues.

Regarding the proposed endeavor, on the Form I-140, Immigrant Petition for Alien Worker, the Petitioner provided the following information:

Part 5 - Additional Information About the Petitioner

Section 11. Occupation: Computer Scientist

Part 6 - Basic Information About the Proposed Employment

Section 1. Job Title: Lecturer

Section 2. SOC Code: 25-1021⁴

Section 3. Nontechnical Description of Job: Research and collaboration on computer science and data science projects, teaching computer science and IT courses, syllabus and material development, administrative and community services.

In the initial filing, the Petitioner indicated that “[i]n the future, [his] plan is to continue [his] research work in th[e] field and improve existing data analytics techniques to address challenges, and apply them to various types of application scenarios such as education, health care and medicine, transportation, social media, logistics, finance, and more.” The Petitioner also stated that his “long term plan is to continue [his] work in academia and research. There is a high demand for computer science, especially data management and data science researchers in both academia and national research centers.” He further indicated that during his current appointment, which “will be renewed yearly at least through May 2023,” he “will look for a tenured track position at [his] current [u]niversity or other U[.]S[.] [u]niversities so that [he] can continue [his] research in the field.” He “will also look for a permanent position at the F[ood and] D[rug] A[dministration] where [he] can work on data science research in the health care and medicine domain.”

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ This standard occupational classification (SOC) code corresponds to the occupation of computer science teachers, postsecondary. See <https://www.onetonline.org/link/summary/25-1021.00#menu>.

[redacted] chair of the department of computer science at the University of [redacted] explained in his July 15, 2019 letter that the Petitioner holds the position of lecturer “whose primary responsibility is teaching.” He also stated that they “appreciate and encourage research” and that the Petitioner “is involved in several research projects, where he performs research on various application scenarios such as logistics, health, smart cities, smart metering, productivity in the garment industry, social media, and sensor data management.”

In response to the Director’s request for evidence, the Petitioner submitted a new letter indicating that he “intend[s] to continue [his] research in the field of applied data science on various application scenarios for solving various data science problems, creating new business opportunities, revealing interesting information from diverse datasets, and thus improving human lives.” The letter does not address his prior statements regarding his intention to either continue working in academia or obtain a position at the Food and Drug Administration.

In light of the above, the Director should determine whether there is sufficient and consistent information concerning the nature of the Petitioner’s proposed future endeavor, as we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the *Dhanasar* analysis. *Id.* at 889. For example, as the Petitioner plans to remain in his current position through May 2023, it is unclear how much time he is able to devote to research while his “primary responsibility is teaching.” This is significant, as we determined in *Dhanasar* that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Similarly, the Director should determine whether the Petitioner has sufficiently established the nature of his involvement in the proposed research projects, such as for whom he is performing the research or the source of any necessary funding. In addition, the Petitioner initially appeared to be engaged, at least in part, in an active employment search, either for a tenure track position at a university or a permanent position at the Food and Drug Administration. We note, however, that the purpose of a national interest waiver is not to afford a petitioner an opportunity to engage in a U.S. job search. As we explained in *Dhanasar*, a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889.

III. CONCLUSION

For the reasons discussed above, we are remanding the petition for the Director to first address the Petitioner’s qualifications for EB-2 classification, the threshold determination in national interest waiver cases. The Director should then determine whether the Petitioner has provided sufficient and consistent information regarding his specific proposed endeavor, such that a determination regarding his eligibility for a national interest waiver may be made. If the Director concludes that the proposed endeavor has been sufficiently established, the Director should provide an analysis of their conclusions for each of the three prongs of the *Dhanasar* analysis. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.